

Internal Revenue Service
memorandum

CC:TL-N-
Br2:RLOsborne

date: DEC 20 1988

to: District Counsel, Dallas, Texas
Attn: George Gasper

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

We hereby respond to the December 7, 1988 request for advice.

ISSUES

1. In what form should forms 872 and 977 be executed in connection with [REDACTED]?
2. In what form should forms 872 and 977 be executed in connection with [REDACTED]?

FACTS

Prior to [REDACTED], [REDACTED], a Texas corporation, was a parent of a group of affiliated corporations filing consolidated returns. In [REDACTED] sold its subsidiaries to [REDACTED], a Delaware corporation, which was also a common parent of a group of affiliated corporations filing consolidated returns. [REDACTED] then transferred all of its assets and liabilities to [REDACTED] in return for limited partnership interests in [REDACTED]. [REDACTED] then dissolved and distributed its [REDACTED] limited partnership interests to its shareholders, who thereby became limited partners in [REDACTED]. [REDACTED] transferred the [REDACTED] assets and liabilities, in turn, to [REDACTED], in which [REDACTED] was a partner.

The [REDACTED] group's taxable years [REDACTED] through [REDACTED] are under audit. The file reflects Forms 872 for those years for [REDACTED], executed by the general partner of [REDACTED] "successor to [REDACTED], " extending the statute of limitations to [REDACTED] or [REDACTED]. The file also reflects Forms 977 for those years for the " [REDACTED] General Partner -- [REDACTED] Successor to [REDACTED] " extending the statute of limitations to [REDACTED] or [REDACTED]. You have asked in what forms new consents should be executed.

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From late [REDACTED] through early [REDACTED], [REDACTED] (" [REDACTED] ") liquidated its subsidiaries and transferred its assets to [REDACTED] in exchange for [REDACTED] limited partnership interests. [REDACTED] then dissolved and distributed its [REDACTED] limited partnership interests to its shareholders, who thereby became limited partners in [REDACTED]. [REDACTED] assumed [REDACTED]'s liabilities, including [REDACTED]'s tax obligations. [REDACTED] transferred the [REDACTED] assets to [REDACTED].

The [REDACTED] group's taxable years [REDACTED] and [REDACTED] are under audit. The file reflects Forms 872 for those years for [REDACTED], executed by [REDACTED], extending the statute of limitations to [REDACTED]. The file also reflects Forms 872 for those years for " [REDACTED] ", executed by the general partner of [REDACTED], "successor to [REDACTED], " extending the statute of limitations to [REDACTED]. You have asked in what forms new consents should be executed.

DISCUSSION

The Forms 872 executed for [REDACTED] and [REDACTED] by the general partner of [REDACTED] as successor are probably invalid. [REDACTED] was not a successor to [REDACTED] or [REDACTED] and appears to have had no authority to extend the statute of limitations on behalf of those corporations.

The Forms 977 executed by [REDACTED], [REDACTED] successor to [REDACTED], [REDACTED] are probably valid, assuming they were timely signed (which is not clear from the file). [REDACTED] was not a successor to [REDACTED]. Rather, under the [REDACTED] of Sale and Purchase [REDACTED] was a transferee. Moreover, the transferee is really not [REDACTED], but [REDACTED] itself. However, while the matter is not totally without litigation risk, the wording is probably a sufficient acknowledgment that [REDACTED] was acting on behalf of [REDACTED], the transferee. The subject Forms 977 extended the statute of limitations until [REDACTED] and [REDACTED].

Under the [REDACTED] of Sale and Purchase, [REDACTED] was to assume the liabilities [REDACTED] had assumed from [REDACTED]. Accordingly, [REDACTED] was a transferee of a transferee. Under IRC § 6901(c)(2), the statute of limitations as to [REDACTED] expires one year after the statute of limitations expires as to [REDACTED], the prior transferee. Accordingly, the statute of limitations as to [REDACTED] will expire in [REDACTED]. As we understand it, [REDACTED] has indicated that it will be willing to execute a Form 977 prior to the [REDACTED] deadlines if further time is needed for the audit.

We understand that [REDACTED] spun off one of its subsidiaries a few years ago. The assets of that subsidiary cannot be reached under the Forms 977 discussed above. Such assets could only be reached by obtaining a consent from that subsidiary individually, or by obtaining the consent of [REDACTED] as agent for the entire group. As to [REDACTED], [REDACTED] and [REDACTED], the statute of limitations appears to have expired with respect to such an option. However, [REDACTED] would still be open. [REDACTED] was dissolved in [REDACTED]. Under Article 7.12 of the Texas Business Corporation Act, as then in effect, upon dissolution a corporation could still be sued. However, the statute did not state that for winding up purposes a dissolved corporation's existence actually continued. Moreover, even if [REDACTED]'s existence is deemed to have continued for winding up purposes under Texas law, it may have terminated for purposes of Treas. Reg. 1.1502-77(d), which deals with the power to act as agent for group members. Accordingly, even with respect to the [REDACTED] taxable year, there is some question as to whether [REDACTED] could at this time execute a Form 872 as agent.

The Forms 872 signed by [REDACTED]'s president regarding [REDACTED]'s individual tax liability (which is the liability to pay the tax owed by the entire group) appear to be valid. By the time those forms were signed, [REDACTED] had dissolved. However, under Section 278 of the Delaware General Corporation Law, [REDACTED] continued in existence for three years for the purpose of winding up its affairs. Accordingly, [REDACTED]'s president could still sign the extensions. Associates Investment Co. v. Comm'r, 69 T.C. 441 (1972). The consents extended the statute of limitations until [REDACTED].

Because [REDACTED] does not have assets any longer, no further consents for [REDACTED] are worthwhile. The major relevance of the existing [REDACTED] consents is that they automatically extend the statute of limitations for transferees. The Securities and Exchange Commission disclosure documentation we reviewed indicates that [REDACTED] never assumed the liabilities of [REDACTED]. Accordingly, we assume that [REDACTED] was not a transferee with respect to the tax obligations of the [REDACTED] group. However, the Conveyance and Assumption Agreement between [REDACTED], [REDACTED] and [REDACTED] shows that [REDACTED] assumed [REDACTED]'s liabilities, including [REDACTED]'s tax liabilities. Accordingly, [REDACTED] is a transferee of [REDACTED]. Under IRC § 6901(c)(1), [REDACTED]'s transferee liability expires one year after the expiration of the transferor's liability. Since [REDACTED]'s liability expires on [REDACTED], [REDACTED]'s liability expires [REDACTED]. We understand that [REDACTED] has indicated that it will sign a Form 977 a few months prior to that date if further time is needed to complete the audit.


CONCLUSION

Most of the assets the Service could possibly reach with respect to [REDACTED]'s tax obligations are now in the possession of

██████████, which appears to have transferee liability. The period of assessments as to ██████████ under existing consents will expire on ██████████ and ██████████. You may wish to attempt to obtain a Form 872 from ██████████ as agent for the group for ██████████ in order to reach the assets of the subsidiary which ██████████ spun off a few years ago. You may also wish to obtain a Form 872 directly from that subsidiary. With respect to ██████████'s tax obligations, all of the assets the Service could possibly reach are now in the possession of ██████████, which appears to have transferee liability. The period of assessments as to ██████████ under existing consents will expire on ██████████.

MARLENE GROSS

By:


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